

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**XL SPECIALTY INSURANCE COMPANY,** )  
 )  
 **Plaintiff,** )  
 )  
 **- against -** )  
 )  
 **JOHN R. LAKIAN, DIANE W. LAMM, &** )  
 **KOBRE & KIM LLP, EISEMAN LEVINE** )  
 **LEHRHAUPT & KAKOYIANNIS, P.C., BRIEF** )  
 **CARMEN & KLEIMAN, LLP, MERRILL** )  
 **COMMUNICATIONS, LLC, KNOX, LLC** )  
 **D/B/A KNOX, LLC OF NEW YORK, and DJW** )  
 **ADVISORS, LLC** )  
 )  
 **Defendants.** )

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**C. A. No. 1:14-cv-05225-AT**

**ECF Case**

**DEFENDANTS JOHN R. LAKIAN AND DIANE LAMM’S ANSWER AND  
AFFIRMATIVE DEFENSES TO DEFENDANTS KNOX, LLC D/B/A KNOX, LLC OF  
NEW YORK AND DJW ADVISORS, LLC’S CROSS-CLAIM**

**ANSWER**

Defendants John R. Lakian (“Lakian”) and Diane W. Lamm (“Lamm”) for their answer to the Cross-Claim in the above referenced action, subject to continuing investigation of the allegations contained therein, hereby answer as follows:

**CROSS CLAIM**

9. Paragraph 9 contains no allegations which require a response. To the extent a response is required, Lakian and Lamm deny the allegations in Paragraph 9.

10. Lakian and Lamm state the terms of the Policy speak for themselves. Lakian and Lamm admit that they are Insureds under the Policy.

11. Lakian and Lamm state the terms of the judgment speak for themselves. Lakian and Lamm admit Knox is litigating against Lakian.

12. Lakian and Lamm state the terms of the judgment speak for themselves. Lakian and Lamm admit DJW is litigating against Lakian.

13. Lakian and Lamm state the terms of the December 8, 2015 Order speak for themselves. Lakian and Lamm deny all remaining allegations in Paragraph 13.

14. Lakian and Lamm state the terms of the December 8, 2015 Order speak for themselves. Lakian and Lamm deny all remaining allegations in Paragraph 14.

15. Paragraph 15 contains a legal opinion to which no response is required. To the extent a response is required, Lakian and Lamm deny the allegations in Paragraph 15.

16. Lakian and Lamm state the terms of the Complaint speak for themselves. Lakian and Lamm admit XL agreed Lakian and Lamm were entitled to some coverage for the Knox Action.

17. Paragraph 17 contains a legal opinion to which no response is required. To the extent a response is required, Lakian and Lamm deny the allegations in Paragraph 17.

18. Paragraph 18 contains a legal opinion to which no response is required. To the extent a response is required, Lakian and Lamm deny the allegations in Paragraph 18.

19. Paragraph 19 contains a legal opinion to which no response is required. To the extent a response is required, Lakian and Lamm deny the allegations in Paragraph 19.

### **RELIEF REQUESTED**

Lakian and Lamm deny that Knox and DJW are entitled to the relief requested in part (a) of its cross-claims or any other relief.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Cross-Claim fails to state a claim as to which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The Cross-Claim is barred as Knox and DJW do not have a cause of action.

#### **THIRD AFFIRMATIVE DEFENSE**

The Cross-Claim is barred, in whole or in part, by the doctrine of laches.

#### **FOURTH AFFIRMATIVE DEFENSE**

The Cross-Claim is barred because Knox and DJW, by their acts omissions and/or conduct, have waived, in whole or in part, their right to obtain the relief sought in the Cross-Claim.

#### **FIFTH AFFIRMATIVE DEFENSE**

The Cross-Claim is barred, in whole or in part, by Knox and DJW's failure to mitigate their alleged damages.

#### **SIXTH AFFIRMATIVE DEFENSE**

Know and DJW lack standing to bring this action.

**SEVENTH AFFIRMATIVE DEFENSE**

The alleged harms sustained by Knox and DJW, if any, are the result of their own acts and/or omissions.

**EIGHTH AFFIRMATIVE DEFENSE**

Lakian and Lamm reserve the right to rely on such other and further affirmative defenses as may be supported by facts to be determined through full and complete discovery and to amend the Answer to assert such affirmative defenses.

WHEREFORE, defendants Lakian and Lamm demand judgment as follows:

- A. Dismissal of defendants Knox and DJW's Cross-Claim;
- B. That Knox and DJW should take nothing by their Cross-Claim;
- C. Awarding Lakian and Lamm their reasonable costs and attorneys' fees; and
- D. Such other and further relief as this court may deem just and proper.

Dated: New York, New York  
January 15, 2016

Respectfully submitted,

s/ Brian J. Osias

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